

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Gallatin River Communications LLC	:	
d/b/a CenturyLink	:	
	:	
Petition for Arbitration Pursuant to	:	11-0567
Section 252(b) of the Communications Act	:	
of 1934, as amended by the	:	
Telecommunications Act of 1996 to	:	
Establish the Rates, Terms and Conditions	:	
of Interconnection with NTS Services	:	
Corp.	:	

APPLICATION FOR REHEARING OF NTS SERVICES CORP.

Pursuant to Sections 200.880 and 200.80 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), NTS Services Corp. (“NTS”) submits this Application for Rehearing of one issue in the Arbitration Decision (“the Decision”) in this case decided on July 11, 2012, served on the parties on July 12, 2012. In particular, NTS seeks re-hearing on the legality of the cost study submitted by CenturyLink supporting its proposed rate for the DS-0 unbundled network element (“UNE”).

The Commission notes in the Decision that “as a threshold matter, the Commission must determine whether the cost information presented by CenturyLink in this proceeding is adequate to set rates based upon the FCC’s prescribed forward-looking economic cost methodology.”¹ As part of this determination, the Commission must decide whether CenturyLink’s cost model determines the “forward-looking, most

¹ Decision at 8.

efficient network architecture and calculates the forward-looking installed cost of UNE loops based on this architecture.”

Arguments were raised by both NTS and Staff determining that the cost study proposed by CenturyLink was deeply flawed. So flawed, in fact, that it should be eliminated for consideration in determining the proper rate for UNE DS-0 loops. The Decision, however, overruled these arguments and only required CenturyLink to make one minor change to the cost study. As CenturyLink noted in its testimony at the hearing held on February 21, 2012, the result of that change would be minimal. That has turned out to be true resulting in a less than one dollar reduction of CenturyLink’s proposed rate of \$26.85 for a UNE DS-0.

Both Staff and NTS suggested that due to the flaws in the cost study, it should be discarded and instead, proxy rates should be used. At a minimum, the rates agreed to in the most recent Verizon UNE rate case were one option proposed by Staff and NTS. The other option proposed by Staff was to simply leave the current price of \$17.93 from the 2006 interconnection agreement with predecessor Gallatin River Communications in effect. The Commission ignored substantial evidence regarding the credibility of the cost study, resulting in an almost \$10.00 increase in DS-0 loop pricing—the most basic building block used by competitive local exchange carriers to provide services to customers. The Commission should reconsider the evidence in this case and order that a proxy rate should be used, or at a minimum, that substantial revisions to the cost study should be undertaken by CenturyLink.

ARGUMENT

1. The Commission did not provide adequate weight to the problems raised by NTS regarding CenturyLink's cost study.

CenturyLink claimed that NTS' concerns with the rate study were unfounded, claiming that NTS merely questioned the inputs to CenturyLink's cost model, and NTS did not propose alternative inputs to be used in the cost study to produce alternative rates. CenturyLink also claimed that NTS did not challenge the design of CenturyLink's cost model.²

This is simply untrue. The Decision notes that NTS' witness Fred Miri raised concerns regarding both annual charge factors and incremental investments that were included in the cost study, such as the inclusion of company airplane fleet costs. That may be the more dramatic example of a cost that should not be considered part of standard corporate operation expenses, but was not the only flaw raised. Mr. Miri's testimony also raised concerns regarding the mechanisms used by CenturyLink regarding investments in "underground, aerial, feeder, drop, network interface device and DLC... were chosen and how certain portions of the loop model were developed."³ Mr. Miri also questioned the maintenance factors claimed given the fact that facility maintenance and construction work on cable plant is no longer done with Illinois CenturyLink employees and is instead now contracted out, presumably to cheaper contractors.

Mr. Miri also raised the issue of the investment costs and expenses claimed by CenturyLink regarding telephone poles. The cost study claims millions of dollars in expenses for poles, but does not clearly describe how the costs are calculated given the

² Decision at 12.

³ Decision at 13.

fact that many of the poles are co-owned with other utilities, and that CenturyLink also receives rent for attachments by other utilities to those poles. CenturyLink did not divulge the lease payments it receives on jointly-owned poles.

Mr. Miri's testimony also argued that CenturyLink's costs as a whole, and those properly apportioned to Illinois, were overstated. CenturyLink is now the third largest incumbent local exchange carrier in the country. As a result of recent acquisitions, CenturyLink enjoys significant economies of scale and access to capital. In similar geographic markets, its costs to provide services should be similar to those charged by Verizon and AT&T. Mr. Miri made it clear that that is not what CenturyLink is proposing through its cost study.

Mr. Miri also questioned the costs attributed to Illinois. CenturyLink did not cite how much of the customer service, wholesale and retail they are allocating to Illinois. Mr. Miri noted that CenturyLink eliminated all customer service positions in Illinois- both wholesale and retail- eliminated all the Illinois employees that had anything to do with servicing retail customers and CLECs. CenturyLink closed three call centers eliminating dozens of jobs. CenturyLink did not divulge how much of this work that was transferred to other states was allocated to Illinois for purposes of the cost study.

Despite these valid concerns, the Decision essentially ignored those arguments and instead just accepted CenturyLink's claim that everything in the cost study is reasonable.

2. The Commission did not adequately consider the flaws in the cost study raised by ICC Staff.

Likewise, Staff also raised arguments regarding the cost study. Staff claimed that CenturyLink's model was flawed because the two wire loops contained in the study contained functionalities (such as broadband capability) and therefore costs that may be excessive. Specifically, Staff noted the apparently excessive use of digital loop carriers in the model that would necessarily drive up the UNE costs. Staff also argued that the 12,000 foot copper/fiber breakpoint for digital loop carriers ("DLCs") to be used in the study was excessive, and instead, an 18,000 foot limit should be used instead.⁴ Without much analysis, and after CenturyLink agreed that 18,000 feet could be used instead, the Decision required CenturyLink to slightly alter the model.

This conclusion defies the real problem with the cost study- the study assumes a platinum-plated network that "models ubiquitous broadband availability."⁵ Staff made this point very clear, but it was ignored. Instead, just a minor change to the cost study was ordered.

This revision ignores the other issues raised by Staff concerning the cost study's foundation. During testimony by CenturyLink's witness, Christy Londerholm, noted that loop density (loops per square mile) is one of the largest factors affecting costs, and that Verizon Illinois' service area is the closest to CenturyLink's service area when comparing loop density. Ms. Londerholm agreed that former Verizon's Illinois service

⁴ Ironically, the excessive issue of DLCs by CenturyLink in and around Pekin has long been a concern for NTS. Placement of a DLC and fiber in the network effectively eliminates NTS' ability to order UNEs to customers served by a DLC. CenturyLink routinely places DLCs in the field, and sometimes with little notice. In effect then, CenturyLink's DLC strategy has both eliminated NTS' ability to serve customers, and through inclusion in the cost study, substantially raised UNE rates.

⁵ Decision at 32.

territory has a loop per square mile density of 28.1, while CenturyLink's Illinois service territory has a loop per square mile density of 48.1. As such, CenturyLink's Illinois service territory has over 70% more loops per square mile than Verizon's Illinois service territory.⁶ In effect then, the Commission has approved a cost study that allows a \$5 increase for CenturyLink above that approved in the Verizon arbitration, despite the fact that CenturyLink's service territory is substantially denser than the former Verizon exchange territory. That is simply illogical.

In addition to loop density, CenturyLink and Staff agreed at the hearing that loop lengths are also a major factor for cost studies. Ms. Londerholm noted that CenturyLink's customer dispersion could be much different than that in the former Verizon territory. For example, CenturyLink's customers could, on average, live much further from the central office requiring longer loop lengths and associated higher expenses in the cost study. No evidence, however, was submitted by CenturyLink to prove that this was the case. In fact, the very opposite could be true.

3. Due to the inadequacy of the cost study, proxy rates should be used.

The Decision did carefully detail NTS' legal arguments regarding the right for state commissions to use proxy rates when TELRIC cost studies were found to be flawed. NTS suggested the current rate be used, or that the rate approved by the Commission in its review of Verizon's cost study in 2006 be used. In an effort to justify an almost \$10 rise in UNE DS-0 prices, CenturyLink also suggested that Verizon's rates should be considered due to the similarities between the two service territories. Specifically, loop density given that that is a major factor in developing costs studies. "CenturyLink avers

⁶ Decision at 26.

that the overall Band 1 rate is reasonable when compared to the Band 1 rate for Verizon, which is the closest analog for CenturyLink in Illinois, and that this is particularly true when the Verizon Band 1 rate is indexed forward into current dollars.⁷” However, CenturyLink then claims that when “indexing forward” that rate, the current price would be \$30.28. CenturyLink never provided any evidence as to how that index, or inflation rate, was developed.

Since the beginning of interconnection obligations, UNE prices have consistently declined nationwide. When state commissions order UNE re-rate proceedings, rates almost always decrease, particularly for DS-0s and DS-1s. CenturyLink is essentially arguing that the DS-0 prices should buck the overall national trend and go up instead. In fact, the price proposed by CenturyLink for a UNE DS-1 recognized this trend by falling from \$181.51 to \$121.97. The Decision does not question why such a substantial reduction in DS-1 prices is reasonable, but an increase in DS-0 prices from \$17.93 to \$26.85 is also reasonable. Again, the logic is puzzling.

CONCLUSION

NTS respectfully requests, for all the reasons identified above, the Commission grant rehearing in this matter for the purpose of reconsidering its decision and ultimately raising UNE DS-0 rates to an unprecedented level for Illinois. Failure to do so will not only harm NTS, but will also harm residential and business consumers in Pekin.

⁷ Decision at 12.

August 10, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristopher E. Twomey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kristopher E. Twomey
Law Office of Kristopher E. Twomey, P.C.
1725 I Street, NW Suite 300
Washington, DC 20006
p: 202.681.1850
f: 202.517.9175
kris@lokt.net